

HOUSE BILL REPORT

HB 1977

As Reported By House Committee On:

Energy & Utilities

Title: An act relating to theft of telecommunication and cable services.

Brief Description: Penalizing theft of telecommunication and cable services.

Sponsors: Representatives Mielke, Casada, Grant, Appelwick, Basich, Smith and L. Thomas.

Brief History:

Committee Activity:

Energy & Utilities: 2/24/95, 2/28/95 [DPS].

HOUSE COMMITTEE ON ENERGY & UTILITIES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Casada, Chairman; Crouse, Vice Chairman; Hankins, Vice Chairman; Kessler, Ranking Minority Member; Kremen, Assistant Ranking Minority Member; Chandler; Huff; Mastin; Mielke; Mitchell and Patterson.

Staff: Lissa Kaufman (786-5793).

Background: Both subscription television and telecommunications service providers have expressed concern over the increasing rates of theft of their services.

Under current law, the state can prosecute a person for theft of services. If the value of the stolen services exceeds \$1,500, the person is guilty of theft in the first degree, a class B felony. If the value of the stolen services is less than \$1,500, but greater than \$250, the person is guilty of theft in the second degree, a class C felony. If the value of the stolen services is less than \$250, the person is guilty of theft in the third degree, a gross misdemeanor.

More specifically, a person is guilty of the crime of theft of cable television services, a gross misdemeanor, if he or she wrongfully obtains cable television services with the intent to avoid payment of any lawful charge for such services. A person is guilty of the crime of unlawful sale of cable television services, a gross misdemeanor, if he

or she offers for sale a decoding or descrambling device with the intent to avoid payment for the services of the cable system.

Current law does not specifically address theft of services from cellular phones or from subscription television services other than cable.

The state can prosecute a person under the Criminal Profiteering Act if the person has committed at least three of the predicate acts listed in the statute. Under the Criminal Profiteering Act, the state and any other individual adversely affected by criminal profiteering can request that a court impose various criminal and civil penalties on a defendant in a criminal profiteering proceeding. For example, a court may order a defendant to pay costs associated with prosecution and investigation and may award up to treble damages to injured parties.

Summary of Substitute Bill: The bill expands the current law pertaining to theft and unlawful sale of cable television service to include all subscription television services. Theft of subscription television services includes situations where, with the intent to avoid payment for subscription television service, a person obtains, attempts to obtain, or assists another person in obtaining subscription television service through the use of a decoding device or by other fraudulent or deceptive means. A person is presumed to intend to avoid payment if he or she installs or reconnects a connection to subscription television services without authorization from the service provider.

A person who, with an intent to avoid payment, advertises for sale, manufactures or imports into Washington State an unauthorized device or kit designed to receive subscription television services is guilty of unlawful sale of subscription television services. Intent to avoid payment is presumed if a person has advertised, leased or sold any unauthorized device or kit designed to receive subscription television services. Unlawful sale of subscription television services is reclassified from a gross misdemeanor to a class C felony.

The bill creates three class C felonies involving telecommunication services such as cellular phone services. First, a person is guilty of theft of telecommunication services if: 1) he or she transmits or receives electronic telecommunications without agreeing to pay the service provider; or 2) if he or she possesses an unlawful telecommunications device. An unlawful telecommunications device is a device which permits unauthorized access to a communication system maintained by a telecommunication service. Second, a person is guilty of unlawful manufacture of a telecommunication device if he or she manufactures or otherwise produces an unlawful telecommunication device. Third, a person is guilty of unlawful sale of a telecommunication device if he or she sells, leases or offers for sale or lease an unlawful telecommunication device or any other equipment the seller knows will be used to manufacture an unlawful telecommunication device.

Both civil and criminal penalties are provided for violations of the crimes covered by the bill. Unlawful sale of subscription television services is added to the list of crimes covered by the Criminal Profiteering Act.

Substitute Bill Compared to Original Bill: The original bill provides that a person who possesses an unauthorized device designed to receive subscription television services is presumed to intend to avoid payment and is guilty of theft of subscription television services. Under the substitute bill, a person possessing such a device is not guilty of theft of subscription television services if the device is not connected, installed, or modified for the purpose of receiving unauthorized subscription television services without payment.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: The subscription television service portion of the bill is primarily aimed at dealers of descrambling and decoding devices. This is evidenced by the fact that unlawful sale of subscription television services is reclassified as a felony, while theft of subscription television services remains a gross misdemeanor. Cellular fraud is a nationwide problem. Fraudulent cellular phones are being used to commit serious crimes. The Legislature should follow the lead of other states and help prevent the spread of cellular fraud by passing this legislation.

Testimony Against: None.

Testified: Ross Baker, McCaw Cellular Communications and Cellular 1; and Bill Lawson, TCI Cablevision.